

## **II. GENERAL PROCEDURES**

### **A. SUBDIVISION REVIEW AND APPROVAL PROCEDURES**

#### **1. Construction Timing:**

The subdivider shall not proceed with any construction work on the proposed subdivision, including grading or excavating to install public improvements, until the governing body has granted preliminary approval of the proposed subdivision plat. The County Attorney will be notified in writing of all violations.

#### **2. Transfers of Title:**

A final subdivision plat must be filed for record with the County Clerk and Recorder before title to the subdivided land can be sold or transferred in any manner. After the preliminary plat of a subdivision has been approved or conditionally approved the subdivider may enter into contracts to sell lots in the proposed subdivisions if all of the following conditions are met:

- a. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana.
- b. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the County Clerk and Recorder.
- c. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the County Clerk and Recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract.
- d. That the County Treasurer has certified that all real property taxes and special assessments on the land to be divided have been paid.
- e. That the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the County Clerk and Recorder, title to the property cannot be transferred in any manner."
- f. A copy of the contracts and escrow agreement described above must be submitted to the Planning Office.

### 3. Pre-Application Meeting Required:

All owners of record, subdividers, and/or their authorized representative shall meet with County Planning Staff prior to submitting the required preliminary plat application. The purpose of this meeting is to discuss these Regulations and standards and to familiarize the subdivider with the applicable goals and objectives of the Town of Columbus and Stillwater County. The subdivider must provide a sketch plan of the proposed subdivision for review and discussion. The sketch plan may be legibly drawn showing the rough layout of proposed features in relation to existing conditions. The sketch plan may be made directly on a topographic map with scale sufficient to show all required information. Approximate tract and lot boundaries, location of easements, utilities, rights-of-way, parks and open spaces, roadways, and a description of general terrain, natural features, existing structures and improvements, and proposed public improvements must be included.

a. A Pre-Application Meeting Checklist specifying the items required for subdivision application, review, and approval will be utilized to conduct the pre-application meeting and must be signed by a member of the County Planning Staff and the owners of record, subdividers, or their authorized representatives attending the pre-application meeting. This checklist will also identify State and local regulations and Growth Policy provisions that apply to the subdivision review process.

b. In addition to the Pre-Application Meeting Checklist, applicants will also receive a Preliminary Plat Submittal Checklist, a list of utility and service providers, and a weed management form.

c. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the time frame for response.

d. Preliminary plats for divisions of land proposed at a pre-application meeting must be submitted within six months of the meeting or a new pre-application meeting must be conducted (MCA76-3-504(2)(q)(v)).

### 4. Permission to Enter:

The governing body or its designated agents may conduct such investigations, examinations and site evaluations as they deem necessary to verify information supplied. The owner, if other than the subdivider, shall grant the governing body or its designated agent permission to enter upon the property to evaluate the land for subdivision. This granting of permission to enter shall be in writing and shall be signed by the owner, if other than the subdivider. If the owner and subdivider are the same, the submission of a preliminary plat for review shall constitute permission to enter the property.

### 5. A landowner may not submit more than two subdivisions in any one month.

## **B. PRELIMINARY PLATS**

### **1. Preliminary Plat Submission:**

An application form for approval of the preliminary plat together with the appropriate review fee and one copy of the preliminary plat in 24"x36" format, 1 copy of plat supplements, and 1 copy of the plat in 11"x17" reduced format shall be submitted to the County Planning Office. All preliminary plat submissions must conform to the procedures and standards contained in these Regulations. An application may be withdrawn in writing by the application at any time during the review process.

### **2. Preliminary Plat Application Form:**

The Preliminary Plat Application Form (see forms in Appendix B) must be completed and signed by the owners of record and subdivider. The Montana Department of Environmental Quality/Local Government Joint Subdivision Form may be submitted but shall be in addition to the Preliminary Application Form.

### **3. Review Fees:**

The required review fee, as presented in the County or Town administrative regulations, must be paid when the application is submitted. All checks should be payable to the County or Town Treasurer as appropriate. All review fees are non-refundable.

### **4. Preliminary Plat (MCA 76-3-504):**

A preliminary plat shall be submitted at a scale sufficient to legibly represent the required data on the plat. The preliminary plat shall be neatly drawn and conform to the design standards set forth in Section III of these Regulations and shall contain the following information:

a. Name of the subdivision, scale, north-arrow, date of preparation, and location quarter-section(s), section, township, range, principal meridian, and county.

b. The exterior boundaries of the tract with the names of plats and numbers of certificates of survey previously recorded within and adjacent to the exterior boundaries of the subdivision.

c. The location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary must be shown along with section and quarter section lines.

d. All lots and blocks, designated by numbers, and the approximate dimensions and area of each lot. In addition, a tabulation of the numbers of lots by various sizes, type of use, and number of units must be shown on the face of the plat.

e. Approximate total net and gross acreage of proposed subdivision. Gross area is figured from outside dimensions of the parcel to be subdivided. Net area uses the same figures minus any area dedicated to public access or park.

f. All streets, alleys, avenues, roads, and highways, and the width of the rights-of-way, grades, and curvature of each with existing and proposed street names, and proposed locations of intersections or other access points to existing roads or highways (see Section IV, Design and Improvement Standards). Rural street names are subject to approval by the County 911 Committee, while streets within the Town of Columbus are subject to approval of the Town.

g. The approximate location, boundaries, dimensions, and areas of any parks, schools, common grounds, water storage facilities, or other grounds dedicated for public use.

h. The approximate location, identity, and metes and bounds description of all existing easements and rights-of-way of record and proposed public and private easements, rights-of-way, and public access (MCA 76-3-504(1)(m)).

i. The location and description of all existing agricultural water user facilities.

j. The approximate location, size, and depth of existing and proposed sanitary and storm sewers, water mains, fire hydrants, street lights, gas, electric, telephone lines, and similar utilities.

k. The ownership of lands immediately adjoining the site.

l. Location of buildings, structures, fences and other improvements, railroads, powerlines, towers, roads, and land uses on or within 100 feet of the property.

m. Existing or proposed zoning of the tract and adjacent lands within 100 feet. If such lands are unzoned, so note on the plat.

n. Vicinity map showing the location of the proposed subdivision, its relation to specifically named access roads, and distance to nearest town.

o. Conformance to Section IV, Design and Improvement Standards.

p. Notation on plat that physical and legal access are provided (MCA 76-3-608(3)(d)).

## 5. Preliminary Plat Supplements:

The following shall be supplied with, and considered a part of, the preliminary plat:

a. **An environmental assessment** shall accompany the preliminary plat unless the subdivider has been exempted. Appendix A provides the format of and questions to be addressed in the environmental assessment.

(1) The requirement for preparing an environmental assessment does not apply when the application is the first minor subdivision created from a tract of record.

(2) All or any portion of the environmental assessment requirement may be waived by the Planning Board when the proposed subdivision conforms to an adopted Growth Management Plan, meets adopted zoning regulations, and is within a long-range development program of public works projects.

When such an exemption is granted, the Planning Board shall prepare a written statement of the reasons for granting the exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review. A request for such an exemption must be made by the subdivider in writing at least four weeks prior to the meeting of the Planning Board at which the request for exemption can be reviewed.

b. **A complete grading and drainage plan** shall be submitted and must contain the following information:

(1) Location and details, with accurate dimensions, courses, elevations, and cross sections of the existing and proposed grades of streets, bridges, ditches, culverts, and other drainage improvements. All drainage structures must be capable of accommodating the 100-year event for runoff passing through the subdivision. Stormwater detention/retention requirements shall be designed per Circular DEQ 8, Montana Standards for Subdivision Drainage. All culverts shall be at least 15 inches in diameter with a minimum grade of 0.5 percent.

(2) Ground contours shall be provided at two feet intervals for all areas where new improvements or changes in existing topography are planned. For all other subdivision areas it will be sufficient to show U.S. Geological Survey topographical map contours (20-foot interval). If the site is generally flat, provide three spot elevations over the site.

(3) Information describing the ultimate destinations of storm runoff waters from the subdivision and the effect of the runoff on downslope drainage structures.

(4) Rainfall records or hydrographs that were used to determine runoff quantities along with a description of the design procedures used to prepare the drainage plan.

(5) Describe construction procedures, slope protection, riprap, and reseeding methods used to minimize erosion.

c. **Water and sanitation information**, as per MCA 76-3-601, 76-4-104, and 76-3-622 and unless exempted from review under MCA 76-4-125(2), proposed subdivisions that will include new water supply or wastewater facilities shall include information that must provide:

- (1) a vicinity map or plan that shows:
- (a) the location within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:
- (i) flood plains;

- (ii) surface water features;
  - (iii) springs;
  - (iv) irrigation ditches;
  - (v) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
  - (vi) for parcels less than 20 acres, mixing zones identified as provided in subsection (B)(5)(c)(7); and
  - (vii) the representative drainfield site used for the soil profile description as required under subsection (B)(5)(c)(4); and
- (b) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;
- (2) a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including:
  - (a) whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality; and
  - (b) if the water supply and wastewater treatment systems are shared, multiple user, or public, a statement of whether the systems will be public utilities as defined in MCA 69-3-101 and subject to the jurisdiction of the public service commission or exempt from public service commission jurisdiction and, if exempt, an explanation for the exemption;
- (3) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to MCA 76-4-104;
- (4) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:
  - (a) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (B)(5)(c)(7), that complies with standards published by the department of environmental quality;
  - (b) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and
  - (c) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (B)(5)(c)(4)(b);
- (5) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:
  - (a) obtained from well logs or testing of onsite or nearby wells;
  - (b) obtained from information contained in published hydrogeological reports; or
  - (c) as otherwise specified by rules adopted by the department of environmental quality pursuant to MCA 76-4-104;
- (6) evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to MCA 76-4-104;

(7) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to MCA 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection, the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under MCA Title 76, chapter 4.

d. **Water, mineral, and development rights.** The subdivider must disclose the status of developments rights and water rights along with the source of water for such rights. Mineral rights are not part of the subdivision review process. For water rights, if the proposed subdivision creates lots averaging less than five acres in size, pursuant to 76-3-504(1)(j), MCA, the subdivider shall:

(1) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(2) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(3) reserve and sever all surface water rights from land.

e. **Overall development plan.** When a tract of land is to be subdivided in phases, the subdivider must provide an overall development plan indicating intent for the entire development. The environmental assessment, community impact analysis, grading and storm drainage plan, and traffic accessibility study must reflect the entire development area; these studies can then be referred to in the submittal of each phase without further analysis. Hydrology and non-degradation studies may also be required. A preliminary plat must reflect just the submittal stage, and each phase must be able to function as to traffic circulation and community services without the completion of additional or subsequent phases. The first public hearing will consider both the overall development plan, the first phase subdivision plat, and requested zoning (if any); each subsequent phase will require a public hearing. Each phase must address community impact and water supply and sewage disposal. Zoning and annexation in the Columbus jurisdictional area will be addressed by Columbus on the basis of each phase.

f. **A subdivision improvements agreement (SIA)**(derived from the authority granted local governments by statute (MCA 76-3-102)) shall be submitted to show the location and time frame for construction of planned improvements, existing improvements that may be on-site, how planned improvements will be financed, and who is responsible for such improvements. The following must be included:

(1) reference can be made to the Grading and Drainage Plan.  
(2) sanitary sewage treatment facilities.  
(3) potable water facilities.  
(4) cross sections of planned roadways and related transportation improvements such as traffic control facilities, street name signs, sidewalks, pathways, street lights, curbs and gutters, individual lot access, and parking.  
(5) utilities by name and type to include electricity, telephone, natural gas, and cable.

(6) water facilities for fire fighting (see design standard).  
(7) park land, park improvements, cash-in-lieu of required park land, or combinations thereof and provisions for maintenance.

(8) planned mail delivery location.  
(9) noxious weed management plan.  
(10) waiver of protest for future improvements.  
(11) Facilities for central water distribution and treatment and/or sanitary sewer collection and treatment and major subdivision roadways must be designed and inspected during construction by a licensed professional civil engineer. The subdivider must also coordinate with the Public Works Director (if Columbus) or the Stillwater County Road and Bridge Superintendent an inspection of such facilities two years after construction completion and certify that such improvements are built as required by the local governing body. The latter may hire an independent professional engineer, after notifying the subdivider in writing of its intent, to inspect any water, sewer, or roadway plans or installation at any time during the subdivision development process. Provisions in this paragraph must be delineated in the SIA.

(12) The SIA is a legal contract between the local government and the subdivider. As such it is signed and notarized by the subdivider and signed by the local government and is enforceable by that government. It is also an important source of relevant information for future landowners in the subdivision.

(13) If required improvements are to be constructed after the filing of the final plat, provisions to insure the construction of such improvements (see Appendix B) must be made prior to the filing of the final plat in a manner acceptable to the Town of Columbus or Stillwater County as applicable.

(14) A final plat in phased subdivisions will be contingent upon completion and acceptance of all improvements in that phase by the Stillwater County Commission or Columbus Town Council, as appropriate.

(15) As provided in section 76-3-510, MCA, local governments may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs shall reasonably reflect the increase in costs to public services directly attributable to the subdivision.

(16) The SIA and attachments thereto become a covenant running with the land (see MCA 70-17-201). As such, future purchasers of lots within the subdivision are bound by obligations contained in the SIA.

(17) Digital copies in Microsoft Word of the SIA must be submitted.

g. **Subdivision Guarantee or Certificate of Title Abstract** as per MCA 76-3-612 less than 30 days old.



h. **Traffic Impact Analysis** if more than 25 residential lots. For commercial developments, the need for such analysis will be indicated at the pre-application meeting. This study must be prepared by a licensed professional engineer with documented traffic engineering expertise acceptable to the governing body.

(1) The analysis will include supporting documentation including maps and, at a minimum:

- (a) existing traffic circulation conditions and patterns;
- (b) anticipated traffic circulation conditions and patterns generated by the proposed subdivision;
- (c) the affect on the existing road network; and
- (d) recommendations to alleviate negative effects.

(2) The Traffic Impact Analysis will be reviewed as part of the proposed subdivision and may be reviewed by a traffic engineering consultant as provided in Section II.B.6 of these Regulations.

i. **Draft of homeowners' association incorporation, by-laws, and covenants and restrictions.** If common property, such as dry hydrants, roads, and parkland, is to be managed by subdivision homeowners, a homeowners' association shall be created which, shall at a minimum, provide for:

(1) mandatory membership for each lot owner and any subsequent buyer.

(2) perpetual reservation and maintenance of any common property.

(3) association responsibility for liability insurance, local taxes, and the maintenance of recreational and other common land and facilities.

(4) property owners paying their pro-rata share of the cost and the provision for delinquent assessments charged by the association becoming a lien on the lot/property.

(5) adjusting assessments to meet changing needs.

(6) means of enforcement.

(7) routine safety inspection and immediate follow-up maintenance to correct unsafe conditions on any common areas such as roads and signage, parks, dry hydrants, bridges, etc. Where, because of public safety issues, the local governing body must replace signage, repair a bridge or dry hydrant, or similar activity, the governing body will assess the cost of such activity to the homeowners' association, and the by-laws of the latter must include provision to reimburse the local governing body for such expense.

(8) receiving and processing complaints.

(9) require permission of the governing body before the association can be dissolved or any provisions pertaining to roadway, noxious weed control, and common facilities can be modified.

(10) control of noxious weeds.

(11) proof of registration of the Association with the State of Montana must be provided.

(12) any other provisions the governing body feels necessary to provide for the health, safety, and welfare of the public.

j. **Documentation of all planned and existing utility and access easements and rights-of-way of record and in the Subdivision Guarantee.** Such easements and documentation of easement and rights-of-way must be described, dimensioned, and located on the plat, and all new public utility easements must be of sufficient width to allow placement and maintenance of such utilities (MCA 76-3-504(1)(m)).

6. Use Consulting, Appropriately Licensed, Professionals for Review:

The appropriate governing body may, as part of its review process, contract with professional engineers, traffic analysts, surveyors, attorneys, and similar experts to examine proposed plans and improvements of a subdivision application. The cost of such contracting will be paid by the subdivision applicant prior to filing the final plat of the subject subdivision. The applicant will be notified of the impending cost to applicant of such third part professional review during the Pre-Application Meeting or at the time of the Sufficiency Review of the elements of the application.

7. Review of Subdivision Application for Required Elements and Sufficiency of Information:

a. A subdivision application is considered to be received on the date of delivery to the County Planning Office and when accompanied by the review fee.

b. Within five working days of receipt of a subdivision application, the County Planning Office shall notify the applicant in writing (which may be email) if an element, required in such application per Subsections II.B.1 through II.B.5., is not included in the application (MCA 76-3-604 (1)(b)).

c. Within 20 working days after the submittal of the completed application accepted by the County Planning Staff, the latter shall notify the applicant in writing (which may be email) of any missing, needed, or incorrect information in any of the elements of the application (MCA 76-3-604 (2)(a)).

d. Acceptance by the Planner of the application starts the review timeframe required by statute. Acceptance of an application by the Planner does not ensure that it will be approved by the AGB and does not limit the ability of the Planner or the Planning Board to request additional information during the review process (MCA 76-3-604 (3)). The time limits provided in the preceding paragraphs “a” and “b” apply to each submittal of the application.

After the Planner has found that the application is complete, the AGB shall approve, conditionally approve, or deny the proposed subdivision within 60 working days (35 days for minor plats) based on its determination of whether the application conforms to the provisions of these Regulations. The subdivider and the Planner may agree to an extension or suspension of the review period, not to exceed one year, or a subsequent public hearing is scheduled and held as provided in Section 8.a herein. For subdivisions containing 50 or more lots, the review period is 80 working days (MCA 76-3-604(4)).

e. If the governing body denies or conditionally approves the proposed subdivision, it shall send the applicant a letter stating its decision.

(1) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter may occur only under those subdivision Regulations in effect at the time a subdivision application is determined to contain sufficient information for review as provided in Subsection 5 (MCA 76-3-604(9)(a)).

(2) If Regulations change during the review periods provided in preceding Subsections 7.a and 7.b, the determination of whether the application contains the required elements and sufficient information must be based on the new Regulations.

#### 8. Public Hearing (MCA 76-3-605):

a. After receiving a complete subdivision application, the Planning Board, acting on behalf of the local government, will schedule, advertise, and conduct at least one public hearing on the application of all major subdivision proposals and for the second or subsequent minor subdivision from a tract of record. Notice of time, place, and date of the hearing shall be published twice in a newspaper of general circulation in the County, the first publication not less than 15 days prior to the date of the hearing. The subdivider and each purchaser under a contract for deed of record of property immediately adjoining the land proposed to be subdivided and each owner of property immediately adjoining the exterior boundaries of the plat shall be notified of the hearing by certified mail not less than 15 days prior to the date of the hearing. All affected units of local government will also be notified of all subdivision proposals. A presentation of the subdivision proposal must be made at the public hearing by the subdivider or an authorized representative. The County Planning Office shall provide a written, draft, findings of fact to the appropriate Planning Board, when the agenda for the latter meeting is sent, based on these regulations and the review criteria. After presentations of the proposed subdivision, questions and comments both verbal and written will be accepted. Participants are invited by the Planning Board President to state if they are in favor or opposed to the subdivision and give the reasons for their position. After the public hearing is closed, the Planning Board shall discuss the proposed development, receive input from the County Planning Staff, and make a recommendation to the appropriate governing body.

b. If new information is presented after the public hearing for a subdivision application, the governing body shall determine whether such information is new and has never been submitted as evidence or considered by either the governing body or the County Planning Staff at a hearing during which the subdivision application was considered.

c. If the governing body determines that the public comments or documents constitute information described in the preceding, it may:

(1) approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information if it determines that the new information is either irrelevant or not credible; or

(2) schedule or direct its agent or agency to schedule a subsequent public hearing for consideration of only the new information that may have an impact on the

findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

d. If a public hearing is held as provided in for in the preceding paragraph, the 60-working-day subdivision review period is suspended, and the new hearing must be noticed and held within 45 days of the governing body's determination to schedule a new hearing. After the new hearing, the 60-working-day time limit resumes at the governing body's next scheduled public meeting for which proper notice for the public hearing on the subdivision application can be provided. The governing body may not consider any information regarding the subdivision application that is presented after the hearing when making its decision to approve, conditionally approve, or deny the proposed subdivision.

e. If the County Planning Staff determines that information in the application is not sufficient to allow for review of the proposed subdivision, the Planner shall identify the insufficient information in its notification. A determination that an application contains sufficient information for review does not ensure that the proposed subdivision will be approved or conditionally approved by the appropriate governing body and does not limit the ability of the Planner or the governing body to request additional information during the review process. The time limits provided in the preceding paragraphs 7.b and 7.c apply to each submittal of the application until:

- (1) a determination is made that the application contains the required elements and sufficient information; and
- (2) the subdivider or the subdivider's agent is notified.

After the Planner has notified the subdivider or the subdivider's agent that an application contains sufficient information delineated herein, the appropriate governing body shall approve, conditionally approve, or deny the proposed subdivision within 60 working days, based on its determination of whether the application conforms to the provisions of these Regulations. The subdivider and the Planner may agree to an extension or suspension of the review period, not to exceed one year, or a subsequent public hearing is scheduled and held as provided in 8 of this Section.

f. If the governing body denies or conditionally approves the proposed subdivision, it shall send the subdivider a letter stating its decision.

(1) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter may occur only under those subdivision Regulations in effect at the time a subdivision application is determined to contain sufficient information for review.

(2) If Regulations change during the review periods provided, the determination of whether the application contains the required elements and sufficient information must be based on the new Regulations.

## 9. Preliminary Plat Approval, Conditional Approval, or Disapproval:

The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision shall be whether the preliminary plat, plat supplements, public hearing,

Planning Office reports, Planning Board recommendation, findings of fact, and any requested additional information demonstrate that development of the subdivision would be in conformance with the provisions of these Regulations.

The governing body may conditionally approve a preliminary plat and require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified through the review. The governing body shall issue written findings to justify the reasonable mitigation required. When requiring mitigation, subdividers will have the opportunity to express their preference. The subdividers preference will be considered by the governing body along with the Planning Office report, Planning Board recommendations, information from public meetings and hearings, any additional information that was requested, and the findings of fact.

The governing body shall reject any subdivision which it finds does not comply with these Regulations. When a preliminary plat is denied or conditionally approved the governing body shall provide a written statement of the reasons, evidence that justifies the denial or conditional approval, and information describing the appeal process for the denial or conditional approval to the applicant.

#### 10. Preliminary Plat Approval Period:

Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of such approval (MCA 76-3-604(5) and 76-3-620). This statement must also include a summation of public comment from the public hearing (76-3-604(6)(a)). This approval shall be in force for not less than one or more than three calendar years.

At the end of this period the governing body may, at the request of the subdivider, extend its approval for a mutually agreed-upon period of time. Any agreed upon extension must be in writing and dated and signed by the governing body and the subdivider or subdivider's agent (see Appendix D). The governing body may issue more than one extension (MCA 76-3-610(1)). Any request for such extension must be made to the planning office and accompanied with an Application for Subdivision Approval Period Extension (see Appendix E). The Planning Board will review the request and make a recommendation to the County Commissioners to either approve or deny the requested extension.

After the preliminary plat is approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval providing said approval is obtained within the original or extended approval period as provided above.

### C. FINAL PLATS

#### 1. Final Plat Submission:

The final plat must be submitted before the expiration of the preliminary plat approval period. An application for final plat approval (see Appendix D), together with one paper copy of

the final plat, the appropriate review fee, and drafts of all required documents shall be submitted to the Planning office.

2. Final Plat Contents:

The final plat submitted for approval shall conform to the preliminary plat as previously reviewed by the Planning Board and approved by the appropriate governing body. The final plat shall incorporate all modifications and conditions of approval required in the review process and the Montana Uniform Standards for Final Subdivision Plats (ARM 24.183.1107).

3. Final Plat Review:

The final plat will be reviewed by the County Planning Staff to assure that it conforms to the conditions of approval for preliminary plats or minor subdivision plats. The County Planning Staff shall review the paper copy of the plat and all accompaniments for compliance with the conditions for approval of the preliminary plat. When satisfied that the final plat and accompaniments are in compliance, the Planning Staff shall advise the subdivider to submit two reproducible mylars of the final plat along with original copies of all required signatures, notaries, dates, final plat accompaniments, and plus plat review fee.

The County Planning Staff shall act in an advisory capacity and recommend to the governing body the approval, or disapproval of the final plat. If applicants, landowners, or other aggrieved parties disagree with recommendation, they must submit a written statement to the governing body detailing the reasons for their objection and evidence that justifies the objection. This written statement must be submitted to the governing body before their scheduled meeting at which the final plat will be acted upon.

The governing body may require that final subdivision plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Clerk and Recorder. The governing body may also require the review of the Certificate of Title Abstract for the land in question by the County or Town Attorney.

4. Guarantee of Public Improvements:

a. As a condition of approval of the final plat, the subdivider shall have installed all required improvements or shall enter into an agreement guaranteeing the construction and installation of all such improvements. Alternative methods of guaranteeing public improvements and the procedures and requirements for securing the guarantees are provided in Appendix B. The County Road and Bridge Superintendent, Town Public Works Director, consulting engineer designated by the governing body, or other local public official with relevant authority, shall inspect all required public improvements for conformance with the approved plans and specifications submitted for such improvements.

b. As per MCA 76-3-510, all payments made by a subdivision developer for required improvements must be expended on such improvements.

c. The Stillwater County Commission or Columbus Town Council, as appropriate, may require a percentage of the improvements necessary to protect public health and safety be completed before allowing financial guarantees (MCA 76-3-507(4)).

5. Final Plat Approval or Disapproval:

The governing body shall examine every final subdivision plat and shall approve it when and only when it conforms to the conditions of approval set forth for the preliminary plat and to the terms of such approval. Acceptance of any public dedication of land shall be indicated by the signature of the local governing body officials on the final plat.

If the final plat is disapproved, the reasons for disapproval shall be stated in the records of the governing body with written explanation and references to all pertinent statutes, administrative rules, and local regulations substantiating the reasons for denial. The final plat along with the reasons for disapproval shall be returned to the subdivider within ten days of the decision of the governing body. This letter shall also include information describing the appeal process for the denial to the applicant. The applicant may make necessary corrections and resubmit the final plat for approval.

The governing body may withdraw approval of a plat before filing if it determines that information provided by the subdivider, and upon which such decision was based, is inaccurate.

6. Final Plat Filing:

Within 14 days of the approval of the final plat the Planning Office shall submit the approved final plat and required documents to the County Clerk and Recorder for filing. After filing, the plats may not be altered in any manner. The County Clerk and Recorder shall refuse to accept any plat for record that fails to have approval in proper form and shall file approved plats only if they conform to the requirements of ARM 24.183.1107 and are accompanied by the following items:

a. notarized signatures of all owners of record of the land to be subdivided certifying the purpose of the subdivision.

b. notarized signatures of all lien holders or claimants of record against the land to be subdivided.

c. certification of plat approval by the appropriate governing body.

d. certification of by the landowner of dedication of streets, parks, or other public improvements.

e. Certificate of Title Abstract dated not more than 30 days of the complete final plat application date.

f. Subdivision Improvements Agreement signed and notarized by subdivider and the appropriate governing body.

g. copy of approval by the DEQ for lots of less than 20 acres. For lots 20 acres to 160 acres in size a copy of the County Sanitarian's approval.

h. copies of articles of incorporation and by-laws of any property owner's association with covenants and deed restrictions.

i. copies of final plans, profiles, grades, and specifications for installed improvements, including complete grading and drainage plan, with statement by the subdivider's engineer (if required) indicating that all the required improvements installed are in conformance with the attached plans. Furthermore, this statement must reiterate the provision in the subdivision improvements agreement that all installed public improvements have been constructed to the governing body's standards and that such improvements are guaranteed for two years. Furthermore the engineer's statement must note the understanding that inspection of the installed, public improvements will be made by the governing body's representative, with the subdivider's engineer, at the end of the two-year period.

j. certification by an examining land surveyor, where applicable.

k. copy of the State or County highway permit or authorization when a new street or road will intersect with a State or County road.

l. for County subdivisions, statement that the County will not be required to improve or maintain any proposed roads within or providing access to the subdivision to include dust control.

m. signature of the County Treasurer noting all real property taxes and special assessments on the land to be divided has been paid.

n. Flood Hazard Evaluations if required.

o. Statement of source of water for any water rights in the subdivision along with a statement as to who owns such water rights, if any, in the subdivision.

p. Statement that "The status of mineral rights is not part of this subdivision review process."

7. Correcting or Amending Recorded Final Plats:

a. Correcting Filed Recorded Plats:

Corrections of drafting or surveying errors that in the governing body's opinion will not materially alter the plat, its land division, or the improvements to less than the standards contained herein, may be made by the submission of a corrected final plat for the governing body's approval. The plat shall be entitled "Corrected Plat of the (name) Subdivision," and the reason for the correction shall be stated on the face of the plat.



b. Amending Final Plats:

(1) Material Alterations: Changes that materially alter the final plat or any portion thereof or its land divisions or improvements shall be made by the filing of an amended plat showing all alterations. Within a platted subdivision, any division of lots which results in an increase in the number of lots, or which redesigns or rearranges six or more lots, must be reviewed by the County Planning Staff and approved by the governing body, and an amended plat must be filed with the County Clerk and Recorder.

The amended plat shall be subject to procedures for major or minor subdivision as appropriate. The final amended plat submitted for approval shall comply with the Montana Uniform Standards for Final Subdivision Plats (ARM 24.183.1107) with the exception that the title shall include the word "Amended," or "Amended Plat of the (name) Subdivision," or (name) Subdivision Amended."

(2) Exemption from Amended Plat Review: The relocation of common boundaries and the aggregation of lots within platted subdivisions where five or fewer of the original lots are affected within a platted subdivision filed with the County Clerk and Recorder are exempt from approval as subdivisions. An amended plat must be prepared following the requirements of the Montana Uniform Standards for Final Subdivision Plats (ARM 24.183.1107) except that in place of the governing body's approval, the landowner certifies that the approval of the governing body is not required pursuant to 76-3-207(2), MCA. These exemptions must be submitted for review by the County Planning Staff, along with the required review fee for evaluation against the County and Town's subdivision evasion criteria.

**D. MINOR SUBDIVISIONS (MCA 76-3-609)**

If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record (MCA 76-3-609(2)). Minor subdivisions are defined in Section III of these Regulations and must conform to all provisions for major subdivisions found in Sections II.A, B, and C of these Regulations, including review of application and timeframes (MCA 76-3-209 (2)(a)), except for the following provisions:

1. Environmental Assessment and Public Hearing:

a. For the first minor subdivision created from a tract of record (see Definitions), the requirement for an environmental assessment and a public hearing do not apply. Subsequent minors from a tract of record will be considered a major subdivision.

b. In accordance with Stillwater County Policy # 10-P99-02, the Planning Office will notify adjoining landowners in the County of the Planning Board Meeting at which minor subdivisions will be reviewed. At the County Planning Board Meeting, the public shall be asked to provide input about the proposed subdivision

2. The subdivider must submit an assessment of the proposed subdivision's affect on agriculture, agricultural water users' facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety (see 76-3-608, MCA).

3. Parkland dedication shall be required for a first minor subdivision if the proposed subdivision will have (or zoning permits) condominiums or other multi-family housing, or if any of the lots are located within the municipal limits of Columbus (MCA 76-3-621(3)(e) and MCA 76-3-621(8)).

4. Summary Review:

A subdivision located outside of the Columbus-City County planning jurisdiction that qualifies under these Regulations as a first minor subdivision from a tract of record and which contains only one or two lots may be reviewed by the County Planning Staff, or other designee of the County, who will make a recommendation to the County Commissioners in conformance with these Regulations (76-1-107, MCA).

5. The review period for the first minor subdivision from a tract of record may be extended or suspended by agreement between the developer and the reviewing agent for a period not to exceed one year (MCA 76-3-609(2)(b)).

6. Any minor subdivision that is not a first minor subdivision from a tract of record is a subsequent minor subdivision and must be reviewed as a major subdivision (MCA 76-3-609(3)) to include application submission dates, public hearing, etc.; however, the requirement for an environmental assessment where the subsequent minor subdivision is made up of three lots or less is waived.

**E. LAND SUBDIVISIONS CREATED BY RECREATIONAL CAMPING VEHICLES, MOBILE HOME PARKS, AND CONDOMINIUMS**

1. Recreational Camping Vehicles--Definition:

Developments which are subject to subdivision review because they will provide two or more spaces for recreational camping vehicles will be reviewed under Recreational Vehicle Park Standards in the Design and Improvements Standards section of these Regulations. For purposes of these Regulations the term "recreational camping vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by another vehicle. The term includes but is not limited to travel trailers, camping trailers, truck campers, and motor homes.

2. Mobile/Manufactured Homes--Definition:

Developments which are subject to subdivision review because they will provide two or more spaces for mobile/manufactured homes will be reviewed under Mobile Home Park Standards in the Design and Improvements Standards Section of these Regulations. For purposes of these Regulations the term "mobile/manufactured home" means a detached

residential dwelling unit, which may consist of two or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes but is not limited to “trailer homes,” “house trailers,” and “manufactured homes” whether or not the unit has been constructed after July 1, 1976 in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include “modular” or “factory-built buildings” that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes and are transported to the site for final assembly on a permanent foundation.

3.       Condominiums, Townhomes, or Townhouses:

As defined in 70-23-102, condominiums, townhomes, or townhouses constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:

- a.       the approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses and any applicable park dedication requirements in 76-3-621 are complied with; or
- b.       the condominium, townhome, or townhouse proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect.

4.       If a subdivision that will provide multiple spaces for recreational camping vehicles or mobile homes is also a “trailer court,” “work camp,” “youth camp,” or “campground” as those terms are defined in section 50-52-102, MCA, the appropriate governing body will not grant final approval of the subdivision until the subdivider obtains a license for the facility from the Montana Department of Public Health and Human Services under Title 50, Chapter 52, MCA.

**F.       CLUSTER PLANNED DEVELOPMENTS (CPDS):**

1.       Intent:

The intent of this section is to provide flexibility in certain provisions of the Design and Improvement Standards in Section IV, allowing the subdivider creativity and innovation in subdivision design. The review fees for administering CPDs are less than for normal subdivisions. A Montana-registered landscape architect must be involved in the design of the CPD, and proof thereof must be provided with the CPD submittal.

CPDs are characterized by the following:

- a.       smaller individual lots
- b.       clustering of dwellings and structures
- c.       variable road widths

- d. emphasis on planning, designing, and constructing of roads and other improvements in relation to topography and other natural features
- e. economies in the supply of public services
- f. enhancement and preservation of open space and unique natural features
- g. public convenience and safety
- h. efficient pedestrian and vehicular circulation. (See MCA 76-3-509 and 76-3-509(2)(c))

2. Procedures and Submittal:

a. Pre-Application Meeting and Plan:

- (1) A layout plan showing the proposed location and use of lots and structures and the footprint of each structure on the site
- (2) Pedestrian and vehicular traffic circulation plan
- (3) A description of measures to be taken to assure permanence and maintenance of open space and other facilities to be under common ownership
- (4) A description of all proposed modifications from the Design and Improvement Standards along with the justifications therefore. Such modifications shall not endanger the public health and safety.

b. Preliminary Plat:

The preliminary plat for Cluster Planned Developments shall follow the procedures for preliminary plats contained in Section II.B of these Regulations as well as any additional information found to be necessary during pre-application.

c. Criteria:

- (1) General: The CPD shall conform to the intended purposes of these Regulations, the special intent of this Section, and one or more of the following:
  - (a) Preserve to the maximum extent possible the natural characteristics of the land including topography, vegetation, streams, or other bodies of water
  - (b) Preserve productive agricultural land
  - (c) Protect important historic sites or structures or areas of important wildlife habitat.
- (2) Open Space. Each CPD shall provide an area for dedicated park or common open space constituting at least 60 percent of the gross area of the parcel being subdivided.
- (3) Pedestrian Access. Sidewalks, walkways, trails, or other forms of pedestrian circulation and access to exterior roads and open space shall be required.

(4) Watercourse Enhancement. Natural watercourses and wetlands shall be protected and enhanced.

(5) Roads. Roads designed to furnish access to adjacent areas shall include a public access easement. Width of CPD road easements and driving surfaces shall be based on the traffic generated by the subdivision and as designed by a professional engineer registered in Montana to do transportation analysis. Roadways in CPDs are not required to be paved. Responsibility for the improvement and maintenance of all roads is assumed by the homeowners' association, and such responsibility must be provided to new land owners in the CPD by the real estate sales agent (along with noxious weed information as required by MCA 7-22-2116(2)).

(6) Homeowners' association. A homeowners' association, registered with the State, shall be established and shall be responsible for maintenance of all roadways, pedestrian facilities, open spaces, watercourses, parks, dry hydrants, landscaping, and other common areas.

## **G. ADMINISTRATIVE PROVISIONS**

### **1. Variances From Subdivision Design Standards (MCA 76-3-506):**

a. Purpose. Where the Planning Board finds that extraordinary hardship, practical difficulty, or unnecessary environmental degradation may result from strict compliance with the subdivision Design Standards of these Regulations and/or the purposes of these Regulations may be served to a greater extent by an alternative design, it may recommend and the Appropriate Governing Body (AGB) may so grant variances, so that substantial justice may be done, or unnecessary environmental degradation may be avoided, and the public interest secured, provided that any such variance shall not have the effect of nullifying the intent and purpose of these Regulations, and further provided no variance shall be approved unless supported by written findings of fact based upon the evidence presented that all of the following conditions in this Section are met:

b. Review Criteria. The AGB shall not approve subdivision variances unless it makes findings based upon the evidence presented in each specific case that:

(1) the granting of the variance will not be detrimental to the public safety, health, or welfare or injurious to other property;

(2) the conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;

(3) there are special and unusual circumstances or conditions affecting said property such that the strict application of the regulations from which the variance is requested would deprive the owner of reasonable use of said property and is not the mere grant of a privilege, or because of particular environmental features or characteristics (which may include viewsheds, specimen trees, wetlands, historic sites, etc.), physical surroundings, shape, or topographical conditions of the specific property involved or the nature of adjoining properties warrant relief from the standard in question;

- (4) the variances will not in any manner vary the provisions of any other regulations, ordinances, or plans adopted by the AGB;
- (5) the variance is necessary for the preservation and enjoyment of a substantial property right of the owner;
- (6) the granting of the variance would not be in conflict with the intent of the subdivision and platting provisions of these Regulations;
- (7) the hardship is not a result of the applicant's own actions or from previous actions of the applicant;
- (8) the granting of the variance would not be in conflict with the general purpose and intent of Growth Management Plans of Columbus and Stillwater County, any zoning regulations, or any other applicable ordinances and resolutions of the AGB;
- (9) the subdivision would be better designed if the variance were granted;
- (10) the requested variance is the minimum variance needed;
- (11) the variance will not cause an increase in public costs;

c. When the Planning Board recommends approval of the requested variance, with or without conditions, the Planning Office shall notify the subdivider and the Stillwater County Commission or Columbus Town Council, as appropriate, of its recommendation. The recommendation shall be forwarded to the appropriate governing body with the planning recommendations accompanying the preliminary plat.

d. When the Planning Board recommends denial of a variance request, the Planning Office shall forward the original request for variance to the appropriate governing body along with the Planning Board's recommendation for denial and the reasons therefore.

e. Conditions for Approval. In recommending approval of variances, the AGB may require such conditions as will, in its judgment, secure substantially the objections of the standards or requirements of these Regulations;

f. Variances from Floodway Provisions Not Authorized. The AGB may not, by subdivision variance, permit subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency as defined in Title 76, Chapter 5, MCA.

g. Conditions. In granting subdivision variances, the AGB may require such conditions as will, in its judgment, secure the objectives of this Title. Any approval under this Section shall be subject to the terms of the conditions designated in connection therein. Any conditions required shall be related both in purpose and scope with the relief sought through the variance.

h. Findings of Facts. When any variance is granted, the motion of approval shall contain a statement describing the variance and conditions upon which the issuance of the variance is based.

i. Cluster Planned Development. Where the Design Standards of these Regulations are proposed to be modified through a planned unit development, the applicable process shall be a deviation rather than a variance.

j. Limitations on Approvals. For subdivision variances, the variance approval shall be null and void if the final plat is not filed within the time allowed for final approval by the AGB.

k. At least one month prior to the submittal of a preliminary plat application, a written petition for any variance shall be submitted by the subdivider along with the required review fee. The petition shall state fully the grounds for the application and all of the facts relied upon by the petitioner to justify the variance. At a minimum, the following must be addressed:

- (1) a sketch of the area showing the location and characteristics of the requested variance;
- (2) why a literal interpretation of the Design Standards would deprive the applicant of rights enjoyed by other property owners and not be a mere grant of privilege;
- (3) that the peculiar conditions do not result from previous actions of the applicant;
- (4) list the specific provisions of the Design Standards which prevent the proposed construction on or use of the property;
- (5) list the special conditions or characteristics of the land that prevent compliance with the requirements of the Design Standards;
- (6) list the particular hardship which would result if the specified provisions of the Design Standards were applied to this property;
- (7) indicate the extent to which it would be necessary to vary the requirements or provisions of the Design Standards in order to permit the proposed subdivision of the property;
- (8) that the requested variance is the minimum variance that will allow a reasonable, better designed division of the land or one with much less environmental degradation;
- (9) show how the granting of the variance would not be detrimental to the public safety, convenience, welfare, or be injurious to other property in the vicinity.

## 2. Violations:

Every final subdivision plat must be filed for record with the Clerk and Recorder before title to the subdivided land can be sold or transferred in any manner. If illegal transfers or offers of any manner are made, the County Attorney shall commence action to enjoin further sales or transfers and compel compliance with the provisions of the Montana Subdivision and Platting Act and these Regulations.

a. Violation Procedure: The following process will be followed when investigating potential subdivision violation(s):

(1) The Planner or designated representative will investigate the complaint to determine if there is a violation.

(2) If the investigation indicates there is a violation, the Planner or designated representative will send a letter to the person(s) involved informing them of the problem, potential solutions, and setting a time limit for compliance.

(3) If the violation is not resolved, two additional letters will be sent. The time allowed for compliance will decline with each letter sent.

(4) If the problem is not resolved after three letters, the matter will be submitted to the County Attorney for action.

b. Penalty for Violations: Pursuant to MCA 76-3-105, any person who violates any provision of the MSPA or these Regulations is guilty of a misdemeanor and punishable by a fine of not less than \$100 nor more than \$500 or by imprisonment in the County jail for no less than three months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of the MSPA or these Regulations shall be deemed separate and distinct offence.

### 3. Appeals:

Pursuant to 76-3-620 and 76-6-625, MCA, a decision on a subdivision application may be appealed as follows:

a. A party who is aggrieved by a decision of the governing body to approve, conditionally approve, or disapprove a proposed subdivision may, within 30 days after the decision, appeal to the District Court in Stillwater County. The petition must specify the grounds upon which the appeal is made (MCA 76-3-625).

b. The following parties may appeal under the provisions of this subsection:

(1) the subdivider and/or

(2) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the County or Town where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value; and/or

(3) the County Commissioners of Stillwater County; and/or

(4) the Town of Columbus if a subdivision is proposed within one mile of its limits.

### 4. Amendment of Regulations:

The governing bodies shall use the following procedure to amend these Regulations:

a. Planning staff will present the proposed Regulations to the Planning Boards and allow them the opportunity to discuss the proposed changes including possible revisions of the draft language.



b. Public notice of the intent to amend these Regulations and of the public hearing will be given by publishing notice of the time and place of the hearing in a newspaper of general circulation in the County not less than 15 and not more than 30 days prior to hearing date, at least two times prior to the proposed hearing.

c. The public hearing may be taped and either a transcript or minutes prepared and given to the governing bodies.

d. The governing bodies will make a decision with County approval by resolution and Town approval by ordinance. (Resolutions become effective immediately and ordinances become effective 30 days after the second reading)